

releases the initial public notice announcing the winning bidders.

(d) In the case of oral sequential bidding for narrowband PCS licenses:

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of §1.2104(g) and paragraphs (a) (1) and (2) of this section will apply.

§24.305 Bidding application (FCC Form 175 and 175-S Short-Form).

All applicants for initial provision of narrowband PCS service must submit applications on FCC Forms 175 and 175-S pursuant to the procedures set forth in §1.2105 of part 1 of this chapter. The Commission will issue a public notice announcing the date of a narrowband PCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming narrowband PCS auction must file their applications in order to be eligible for that auction. The public notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

§24.306 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in §1.2106 of this chapter.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in §1.2107 (a) and (b) of this chapter.

§24.307 Long-Form applications.

Winning bidders will be required to submit long form applications on FCC

Form 600, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form 600 shall be submitted pursuant to the procedures set forth in subpart G of this part and §1.2107 (c) and (d) of this chapter and any associated public notices. Only auction winners will be eligible to file applications on FCC Form 401 for initial narrowband PCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form 401.

[59 FR 26747, May 24, 1994, as amended at 59 FR 59957, Nov. 21, 1994]

§24.308 License grant, denial, default, and disqualification.

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in §1.2109 of this chapter.

[59 FR 44070, Aug. 26, 1994]

§24.309 Designated entities.

(a) Designated entities entitled to preferences in the narrowband PCS service are small businesses and businesses owned by members of minority groups and/or women as defined in §§24.320(b) and 24.320(c).

(b) Designated entities will be eligible for certain special narrowband PCS provisions as follows:

(1) Installment payments.

(i) Small businesses, including small businesses owned by members of minority groups and women, will be eligible to pay the full amount of their winning bids on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth §1.2110(e) of this chapter.

(ii) Businesses owned by members of minority groups and women that are winning bidders for the regional licenses indicated by an (**) in §24.129

may pay the full amount of their winning bids (less the applicable bidding credit and down payment) in installments with

(A) Interest imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent;

(B) Interest-only payments for the first two years; and

(C) Principal and interest payments amortized over the remaining eight years of the license.

(2) **Bidding Credits.** Businesses owned by member of minority groups and women, including small businesses owned by members of minority groups and women, will be eligible for a twenty-five (25) percent bidding credit when bidding on the following licenses: (i) The nationwide licenses on Channel 5, Channel 8 and Channel 11; (ii) All MTA licenses on Channel 19, Channel 22, Channel 24; and (iii) All BTA licenses on Channel 26. This bidding credit will reduce by 25 percent the bid price that businesses owned by members of minority groups and women will be required to pay to obtain a license. Businesses owned by women and/or minorities, including small businesses owned by women and/or minorities will be eligible for a forty (40) percent bidding credit when bidding on all regional licenses on Channel 13 and Channel 17. In §24.129, the licenses that will be eligible for 25 percent bidding credits are indicated by an (*); the licenses that will be eligible for 40 percent bidding credits are indicated by an (**).

(3) **Tax Certificates.** Any non-controlling initial investor in a business owned by members of minority groups and/or women and who provides “start-up” financing, which allows such business to acquire a narrowband PCS license(s), and any non-controlling investor who purchases an interest in a narrowband PCS license held by a business owned by members of minority groups and/or women with the first year after license issuance, may, upon the sale of such investment or interest, request from the Commission a tax certificate. Any narrowband PCS licensee who assigns or transfers control of its license to a business owned by members of minority groups and/or women

may request that the Commission issue the licensee a tax certificate.

(c) *Short-Form Application Certification; Long-Form Application Disclosure.* (1) All applicants for licenses under the designated entity provisions set forth in this section shall certify on their short-form applications (Form 175) that they are eligible for those preferences pursuant to this section.

(2) In addition to the requirements in subpart I, all designated entity applicants that are winning bidders shall, in an exhibit to their long-form applications—

(i) Identify each member of the applicant’s control group, regardless of the size of the member’s total interest in the applicant, and each member’s minority group or gender classification, if applicable;

(ii) Disclose the gross revenues of the applicant and its affiliates, and other persons that hold interests in the applicant and their affiliates (including all members of the applicant’s control group); and

(iii) Certify that the personal net worth of the applicant (if an individual), each affiliate and each person that hold an interest in the applicant is less than \$40 million.

(d) *Audits.* Applicants and licensees claiming eligibility under this section shall be subject to random audits by the Commission.

(e) *Definitions.* The terms affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, gross revenues, members of minority groups, passive equity, personal net worth, and small business used in this section are defined in §24.320.

(f) *Unjust Enrichment.* Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the following unjust enrichment provisions:

(1) If a small business paying for a narrowband PCS license in installment payments seeks to transfer a license to a non-small business entity during the term of the license, the remaining principal balance must be repaid as a condition of the license transfer.

(2) If a licensee that utilizes installment financing under this section

seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensees shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of the change as a condition of approval. Increases in gross revenues that result from equity investments that are not attributable to the licensee under § 24.320(b)(2)(iv), revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

[59 FR 44070, Aug. 26, 1994, as amended at 59 FR 50511, Oct. 4, 1994]

§ 24.320 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 24.309–24.315 of this subpart, unless otherwise specified in those sections.

(b) *Small Business; Consortium of Small Businesses.*

(1) A *small business* is an entity that:

(i) Together with its affiliates has average annual gross revenues that are not more than \$40 million for the preceding three calendar years;

(ii) Has no attributable investor or affiliate that has a personal net worth of \$40 million or more;

(iii) Has a control group all of whose members and affiliates are considered in determining whether the entity meets the \$40 million annual gross revenues and personal net worth standards; and

(iv) Such control group holds 50.1 percent of the entity's voting interest, if a corporation, and at least 25 percent of the entity's equity on a fully diluted basis, except that a business owned by members of minority groups and/or women (as defined in paragraph (c) of this section) may also qualify as a small business if a control group that is 100 percent composed of members of minority groups and/or women holds 50.1 percent of the entity's voting interests, if a corporation, and 50.1 percent of the entity's total equity on a fully diluted basis and no single other investor holds more than 49.9 percent of passive equity in the entity.

(2) *Attribution and Aggregation of Gross Revenues and Personal Net Worth.*

(i) Except as specified in paragraphs (b)(1) (iii) and (iv), the gross revenues of the applicant (or licensee) and its affiliates, and other persons that hold interests in the applicant (or licensee) and their affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is a small business.

(ii) The personal net worth of individual applicants (or licensees) and other persons that hold interests in the applicant (or licensee), and their affiliates, if less than \$40 million, shall not be considered for purposes of determining whether the applicant (or licensee) is eligible to bid as a small business.

(iii) Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(iv) The gross revenues and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered so long as:

(A) Such person holds no more than 25 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's or control group; and

(B) The applicant has a control group that owns at least 25 percent of the applicant's total equity and, if a corporation, holds at least 50.1 percent of the applicant's voting interests.

(v) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant shall not be considered so long as:

(A) Such person holds no more than 49.9 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's control group; and

(B) The applicant has a control group that consists entirely of members of minority groups and/or women and that owns at least 50.1 percent of the applicant's total equity and, if a corporation, at least 50.1 percent of the applicant's voting interests.

(3) A *small business consortium* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business.